IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5380 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOR MANGAJI CHATURJI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR GIRISH K PATEL for Petitioner(s) : 1,
MR HEMANG PARIKH A.G.P. for Respondent(s) : 1-3
MR AM PAREKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/07/2007

ORAL JUDGMENT

1. **RULE**. Mr. Hemang Parikh learned A.G.P., waives service of rule on behalf of respondents no. 1 to 3 and learned advocate Mr. A.M. Parekh waives service of rule

on behalf of respondent no. 4. At the request of the learned advocates for the parties, the matter is taken up for final hearing today itself.

2. The petitioner has approached this Court to challenge the order of respondent no. 1 dated 22nd January, 2007 passed in Revision Application No. 92/2004. It is stated by the petitioner that he along with 106 other residents of village Vadavswami, Taluka Kalol, District Gandhinagar had made a complaint against respondent no. 4 who has been running fair price shop under the licence allotted to him by the respondents, that he was indulging into serious irregularities and malpractices and he even did not sell the grains and other essential commodities meant for people living below poverty line, despite the fact that they possessed ration cards. It is the say of the petitioner that on account of such complaint, inquiry was initiated against respondent no. 4 and his licence was terminated by order dated 28th July, 2004. However, respondent no. 4 challenged the said order and ultimately he succeeded in the Revision Application, filed before respondent no. 1. It is the say of the petitioner that since the entire issue arose on account of the compliant lodged by the petitioner and others, they ought to have been heard by respondents no.

1 and 2 before passing the impugned order. Mr. Patel learned advocate for the petitioner has submitted that the petitioner and other signatories of the complaint are the most affected persons and the revisional authority ought to have heard them before passing the impugned order. It is his submission that though the revisional authority has held that irregularities were committed by respondent no. 4, he has been lightly let off on the ground that in future he will improve and one chance for improvement should be given to him. It is averred by Mr. Parekh learned advocate for respondent no. 4 that inquiry was initiated not because of the complaint of the petitioner and others, but on account of surprise checking that was carried out by the Deputy Mamlatdar on 30th September, 2003, as can be seen from the order dated 22nd January, 2007.

2.1. Mr. Hemang Praikh learned A.G.P., for respondents no. 1 to 3 has supported the order and has submitted that the impugned order is just and proper and it may not be disturbed.

3. It appears and it is also so stated by Mr. Patel that the petitioner has made an application before the Secretary, respondent no. 1 herein, who is the revisional

authority, on 7th February, 2007, requesting it to hear the petitioner and others and thereafter pass appropriate order. This application seems to have been given after the impugned order is passed, However, considering the fact that the petitioner and others who had complained about the alleged dishonest behaviour of respondent no. 4 as well as irregularities and illegalities committed by him, it was necessary that before passing any order which may adversely affect the interest of the persons complaining, they ought to have been heard by the revisional authority. In other words, any representative on behalf of the petitioner and others ought to have been given a chance to contest the revision application filed by respondent no. 4. That has not been done. The application dated 7th February, 2007, is still pending before the revisional authority. In view of the same, the present petition is not required to be entertained. However, respondent no. 1 is directed to take into consideration the request made in the application, after affording the opportunity of hearing to the petitioner or any other authorized representative of the signatories to the complaint. In view of the same, the order passed by the revisional authority is required to be quashed and set aside and it is hereby quashed and set aside. Respondent no. 1 is directed to decide the application

dated 7th February, 2007 after affording adequate opportunity to the petitioner or any of their authorized representative by intimating the date of hearing at least one week in advance. It will be open for respondent no. 2 to consider the entire issue afresh and in the process it will also be open for respondent no. 1 to consider the question regarding maintainability of such application as also the merits of the case. It is clarified that till such time the decision is taken by respondent no. 1, status-quo as on today, shall prevail. The exercise to be completed on or before 31st December, 2007.

4. This petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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